

**REMARKS**

Claims 11-20 were previously pending in the application. By the Amendment, Claims 11 and 13 are currently amended, Claim 16 is canceled without prejudice, and Claims 12, 14, 15 and 17-20 remain unchanged. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Entry of this Amendment is proper under 37 C.F.R. §1.116 since the Amendment: (a) places the application in condition for allowance (for the reasons discussed herein); (b) does not raise any new issue requiring further search and/or consideration (since the amendments amplify issues previously discussed throughout prosecution and raised by the Examiner in the previous Office Action); (c) satisfies a requirement of form asserted in the Office Action; (d) does not present any additional claims without canceling a corresponding number of finally-rejected claims; and (e) places the application in better form for appeal, should an appeal be necessary. The Amendment is necessary and was not earlier presented because it is made in response to arguments raised in the Final Rejection. Entry of the Amendment is thus respectfully requested.

In addition to a double patenting rejection under 35 U.S.C. §101 and various formal matters, the claims stand rejected over the cited prior art of record. Specifically, Claims 11-19 were rejected under 35 USC §103(a) as being unpatentable over Wennerberg (U.S. Patent No. 3,539,153) in view of Adamski et al. (U.S. Patent No. 4,982,606). Claim 20 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wennerberg in view of Adamski and Kuechler (U.S. Patent No. 6,294,906).

**Double Patenting**

Claims 11 and 12 were provisionally rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 11 and 12 of co-pending Application No. 10/583,697. In the present application, claim 11 defines a dishwasher including a system for recognition of the fluid level of the rinsing fluid contained in the dishwasher. In contrast, claims 11 and 12 of the co-pending application reference a system for recognition of the fluid level of the washing fluid in the dishwasher. In addition to this distinction, claim 11 has been amended herein to include the subject matter of claim 16. Withdrawal of the double patenting rejection is requested.

Objection to the Disclosure

Fig. 2 has been amended herein to include reference number 12. Withdrawal of the objection is requested.

Drawing Objections under 37 C.F.R. §1.83(a)

With regard to the objection to the drawings, Applicants respectfully submit that every feature of the invention specified in the claims is shown in the drawings. Fig. 2 is a cross section through a part of the sump of a dishwasher. The specification describes that the sump forms the lower part of the washing container in which the washing fluid contained in the dishwasher collects.

Applicants submit that claim 11 does not define “structure for introduction of cleaning agent, fluid carrier” as contended in the Office Action but rather recites that a washing step includes introduction of a cleaning agent and a fluid carrier forming a washing fluid.

As described in connection with Fig. 2, the sump is surrounded by washing fluid, which is shown with reference to the fluid level 9.

With regard to claim 16, Fig. 2 shows the base of the container and where the sensor is located (the description of Fig. 2 provides that the sump forms the lower part of the washing container and shows the filling level sensor 4).

Claim 18 recites that the filling level sensor has an extended, preferably substantially rectangular shape. The filling level sensor 4 shown in Fig. 2 is consistent with this language.

With regard to claim 19, Applicants submit that a “spray arm” is not defined in the claim. The manner in which the sensor is protected from spray water is also shown in Fig. 2, showing the sensor 4 protected by a dome 11.

Withdrawal of the objection is requested.

Rejection under 35 U.S.C. §112, First Paragraph

The Office Action contends that the specification does not provide support for amended claim 11. Without conceding this contention, claim 11 has been amended to delete the drying step. Reference to a washing step and cleaning agent can be found in paragraph [017], lines 6-9; reference to a rinsing step can be found in paragraph [019] (and paragraph [008]); reference to a washing fluid can be found in paragraph [015]; and

reference to a rinsing fluid can be found in paragraph [019]. Withdrawal of the rejection is requested.

Rejection of Claims 11-19

Without conceding the grounds of rejection, claim 11 has been amended to include the subject matter of claim 16. In particular, claim 11 defines a dishwasher including at least one washing container . . . and a system for recognition of the fluid level of the rinsing fluid contained in the dishwasher. The system includes at least one capacitive filling level sensor having at least two probes, forming two capacitor plates, each operatively coupled to a sensor surface and projecting into the washing container for operative contact with the rinsing fluid. The rinsing fluid is used as a dielectric having a dielectric constant that changes with the fill level of the rinsing fluid. At a first fill level, the probes and a rinsing fluid form a capacitor having a first capacitance value indicating a first fill level and causing the filling level sensor to sense the first fill level. At a second fill level, the probes and a rinsing fluid form a capacitor having a second capacitance value indicating a second fill level and causing the filling level sensor to sense the second fill level. At least one filling level sensor is arranged in a base assembly such that rinsing fluid that has flowed from the washing container into the base assembly can be detected.

With regard to the subject matter of claim 16, the Office Action recognizes that Wennerberg and Adamski lack the claimed filling level sensor arranged in a base assembly of the dishwasher. In this context, however, the Office Action contends that it would have been obvious . . . to place the low sensor in Wennerberg in the base “to detect the low level of water where it is not necessarily hit by the spray arm to have protected the circuit from direct contact with the fluid . . . since it has been held that rearranging parts of an invention involves only routine skill in the art,” citing *In re Japikse*.

Applicants respectfully submit, however, that merely rearranging parts of an invention can be distinguished from a specifically defined part position. Applicants recognize that simple rearrangement of parts to perform a similar function in some circumstances may not rise to the level of patentability, but the subject matter defined in claim 11 does not merely amount to a rearrangement of parts. Rather, as noted, claim 11 specifies that at least one filling level sensor is arranged in a particular location (i.e., in a base assembly of the dishwasher) in order to detect rinsing fluid flowed from the washing container into

the base assembly. Since Wennerberg and Adamski do not provide any such sensor in a dishwasher base assembly, Applicants submit that it is not a mere rearrangement of parts to meet the claimed subject matter but rather is the creation of a part that is premised in hindsight in view of Applicants' own disclosure.

Since at least this subject matter is lacking in Wennerberg and Adamski, Applicants submit that the rejection of claim 11 is misplaced. Claims 12, 14, 15 and 17-20 depend from claim 11 and are allowable for the same reasons and also because they recite additional patentable subject matter.

Claim 13 has been rewritten in independent form. In this context, Wennerberg discloses a water level indicator for a dishwasher that provides an indication of three distinct fill levels based on the actuation of three individual sensors. As the water level rises, output signals are sequentially produced by the low-level sensor 26, the medium level sensor 28, and the high-level sensor 30. Adamski discloses the use of a liquid level sensor or probe 48 used in conjunction with a liquid 22 to provide a capacitance to the frequency generation circuitry 42. Adamski recognizes that a capacitance between plates 50 and 52 of sensor 48 is a direct function of the dielectric constant of the material between the two plates 50, 52. In contrast with these systems, claim 13 recites that at least two filling level sensors are provided between which an electrical circuit preferably closes at low current as soon as the filling level sensors simultaneously come in contact with the rinsing fluid. Applicants submit that neither Wennerberg nor Adamski discloses such two filling level sensors or electrical circuitry that closes when the at least two filling level sensors simultaneously come in contact with the rinsing fluid. As noted, Wennerberg rather discloses low, medium and high-level sensors, and Adamski detects a capacitance between plates of a sensor as a function of the dielectric constant of the material between them. Applicants thus respectfully submit that the rejection of claim 13 is misplaced.

Reconsideration and withdrawal of the rejection are respectfully requested.

#### Claim 20

With regard to claim 20, Applicants submit that the Kuechler patent does not correct the deficiencies noted above with regard to Wennerberg and Adamski. As such,

Applicants submit that this dependent claim is allowable at least by virtue of its dependency on an allowable independent claim. Withdrawal of the rejection is requested.

**CONCLUSION**

In view of the above, entry of the present Amendment and allowance of Claims 11-20 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,



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